

In the Matter of PYRIDIUM CORPORATION *and* CHEMICAL WORKERS
UNION, No. 23553, A. F. OF L.

Case No. 2-R-4586.—Decided March 30, 1944

Mr. Herbert S. Greenberg, of New York City, for the Company.

Mr. John J. Walsh, of Utica, N. Y., for the Union.

Mrs. Platonía P. Kaldes, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Chemical Workers Union, No. 23553, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Pyridium Corporation, Harriman, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leon Novak, Trial Examiner. Said hearing was held at Newburgh, New York, on March 3, 1944. The Company and the Union appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. On March 10, 1944, the Company and the Union filed briefs which the Board has considered.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pyridium Corporation is a New York corporation, engaged in the manufacture and sale of chemicals consisting chiefly of pyridium, nicotinic acid, and nicotinide. The Company maintains its principal

¹ District 50, United Mine Workers of America, and the Congress of Industrial Organizations, although duly served with Notice of Hearing, did not appear.

office at Nepera Park, Yonkers, New York, and in addition, operates a chemical manufacturing plant at Harriman, New York, with which we are solely concerned in this proceeding. At its Harriman plant the Company, during the year 1943, purchased raw materials consisting of various chemicals valued in excess of \$100,000, approximately 75 percent of which was shipped to it from points outside the State of New York. During the same period the Company's gross sales of finished products, consisting of various drugs, was valued in excess of \$100,000, approximately 90 percent of which was shipped by it to points outside the State of New York.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Chemical Workers Union, No. 23553, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that the Company has refused to grant recognition to the Union as the exclusive bargaining representative of employees of the Company until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union and the Company agreed that all production and maintenance employees, including storekeepers, drivers, watchmen,³ laboratory assistants, and janitors, but excluding all office employees, chemists, and supervisory employees, constitute an appropriate bargaining unit. The Union, however, wishes to include, while the

² The Field Examiner reported that the Union submitted 101 authorization cards, all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll; that there are approximately 130 employees in the unit requested by the Union, that the cards were dated as follows: 54 were dated in October 1943, 17 in November 1943, 3 in December 1943, 3 in January 1944, 6 in February 1944, and 18 were undated; and that among the above authorization cards there are 11 signed by employees who are employed as chemical operators

³ The watchmen are not militarized.

Company wishes to exclude certain employees classified as chemical operators.

The record discloses that the chemical operators are employed in the production division of the Company. Immediately above the chemical operators are the production manager, the chief chemist, and a supervisor, all of whom are chemical engineers. Immediately under the chemical operators are approximately 20 helpers and 44 laborers, all of whom are concededly ordinary production employees. The chemical operators are the sole liaison employees between the 3 chemical engineers who, for the most part, do not themselves supervise the ordinary production employees, and the non-supervisory employees. The major portion of the work of chemical operators consists of directing the helpers and laborers in the performance of various operations, such as the distillation, sulfonation, and evaporation of chemicals. They receive a higher rate of pay than do helpers and laborers, although all are hourly paid. They possess authority and have exercised the authority effectively to recommend changes in the status of the employees whose work they direct. We find that chemical operators are supervisory employees and we shall therefore exclude them from the appropriate unit. Since, as we have found, the chemical operators are supervisory employees, we will deny the Union's alternative request that they be placed in a separate bargaining unit.⁴

We find that all production and maintenance employees of the Company, including storekeepers, drivers, watchmen, laboratory assistants, and janitors, but excluding office employees, chemists, chemical operators, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

The Union desires an election, and requests that we fix the eligibility date as of the date of the petition herein. The Company asks that we determine the eligibility date in accordance with our usual practice. The record fails to disclose any supporting basis for the Union's request. Accordingly, we shall adhere to our usual practice in fixing the eligibility date in our Direction of Election herein.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-

⁴ *Matter of The Maryland Drydock Co.*, 49 N. L. R. B. 733.

roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of the National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Pyridium Corporation, Harriman, New York, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Chemical Workers Union, No. 23553, affiliated with the American Federation of Labor, for the purposes of collective bargaining.